

111TH CONGRESS  
1ST SESSION

# H. R. 2452

To amend the Internal Revenue Code of 1986 to allow a 5-year carryback of operating losses, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 15, 2009

Mr. NEAL of Massachusetts (for himself, Mr. TIBERI, Mr. PASCRELL, Mr. DAVIS of Alabama, Ms. BEAN, and Mr. HODES) introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to allow a 5-year carryback of operating losses, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Net Operating Loss  
5 (NOL) Carryback Act”.

6 **SEC. 2. 5-YEAR CARRYBACK OF OPERATING LOSSES.**

7 (a) IN GENERAL.—Subparagraph (H) of section  
8 172(b)(1) of the Internal Revenue Code of 1986 is amend-  
9 ed to read as follows:

1           “(H) CARRYBACK FOR 2008 AND 2009 NET  
2           OPERATING LOSSES.—

3           “(i) IN GENERAL.—In the case of an  
4           applicable 2008 or 2009 net operating loss  
5           with respect to which the taxpayer has  
6           elected the application of this subpara-  
7           graph—

8           “(I) subparagraph (A)(i) shall be  
9           applied by substituting any whole  
10          number elected by the taxpayer which  
11          is more than 2 and less than 6 for ‘2’,

12          “(II) subparagraph (E)(ii) shall  
13          be applied by substituting the whole  
14          number which is one less than the  
15          whole number substituted under sub-  
16          clause (I) for ‘2’, and

17          “(III) subparagraph (F) shall not  
18          apply.

19          “(ii) APPLICABLE 2008 OR 2009 NET  
20          OPERATING LOSS.—For purposes of this  
21          subparagraph, the term ‘applicable 2008  
22          or 2009 net operating loss’ means—

23          “(I) the taxpayer’s net operating  
24          loss for any taxable year ending in  
25          2008 or 2009, or

1 “(II) if the taxpayer elects to  
2 have this subclause apply in lieu of  
3 subclause (I), the taxpayer’s net oper-  
4 ating loss for any taxable year begin-  
5 ning in 2008 or 2009.

6 “(iii) ELECTION.—Any election under  
7 this subparagraph shall be made in such  
8 manner as may be prescribed by the Sec-  
9 retary, and shall be made by the due date  
10 (including extension of time) for filing the  
11 taxpayer’s return for the taxable year of  
12 the net operating loss. Any such election,  
13 once made, shall be irrevocable.

14 “(iv) COORDINATION WITH ALTER-  
15 NATIVE TAX NET OPERATING LOSS DEDUC-  
16 TION.—In the case of a taxpayer who  
17 elects to have clause (ii)(II) apply, section  
18 56(d)(1)(A)(ii) shall be applied by sub-  
19 stituting ‘ending during 2001 or 2002 or  
20 beginning during 2008 or 2009’ for ‘end-  
21 ing during 2001, 2002, 2008, or 2009’.”.

22 (b) ALTERNATIVE TAX NET OPERATING LOSS DE-  
23 Duction.—Subclause (I) of section 56(d)(1)(A)(ii) is  
24 amended to read as follows:

1                   “(I) the amount of such deduc-  
 2                   tion attributable to the sum of  
 3                   carrybacks of net operating losses  
 4                   from taxable years ending during  
 5                   2001, 2002, 2008, or 2009 and  
 6                   carryovers of net operating losses to  
 7                   such taxable years, or”.

8           (c) LOSS FROM OPERATIONS OF LIFE INSURANCE  
 9 COMPANIES.—Subsection (b) of section 810 is amended  
 10 by adding at the end the following new paragraph:

11                   “(4) CARRYBACK FOR 2008 AND 2009 LOSSES.—

12                   “(A) IN GENERAL.—In the case of an ap-  
 13                   plicable 2008 or 2009 loss from operations with  
 14                   respect to which the taxpayer has elected the  
 15                   application of this paragraph, paragraph (1)(A)  
 16                   shall be applied, at the election of the taxpayer,  
 17                   by substituting ‘5’ or ‘4’ for ‘3’.

18                   “(B) APPLICABLE 2008 OR 2009 LOSS FROM  
 19                   OPERATIONS.—For purposes of this paragraph,  
 20                   the term ‘applicable 2008 or 2009 loss from op-  
 21                   erations’ means—

22                   “(i) the taxpayer’s loss from oper-  
 23                   ations for any taxable year ending in 2008  
 24                   or 2009, or

1 “(ii) if the taxpayer elects to have this  
2 clause apply in lieu of clause (i), the tax-  
3 payer’s loss from operations for any tax-  
4 able year beginning in 2008 or 2009.

5 “(C) ELECTION.—Any election under this  
6 paragraph shall be made in such manner as  
7 may be prescribed by the Secretary, and shall  
8 be made by the due date (including extension of  
9 time) for filing the taxpayer’s return for the  
10 taxable year of the loss from operations. Any  
11 such election, once made, shall be irrevocable.

12 “(D) COORDINATION WITH ALTERNATIVE  
13 TAX NET OPERATING LOSS DEDUCTION.—In the  
14 case of a taxpayer who elects to have subpara-  
15 graph (B)(ii) apply, section 56(d)(1)(A)(ii) shall  
16 be applied by substituting ‘ending during 2001  
17 or 2002 or beginning during 2008 or 2009’ for  
18 ‘ending during 2001, 2002, 2008, or 2009’.”.

19 (d) ANTI-ABUSE RULES.—The Secretary of Treasury  
20 or the Secretary’s designee shall prescribe such rules as  
21 are necessary to prevent the abuse of the purposes of the  
22 amendments made by this section, including anti-stuffing  
23 rules, anti-churning rules (including rules relating to sale-  
24 leasebacks), and rules similar to the rules under section

1 1091 of the Internal Revenue Code of 1986 relating to  
2 losses from wash sales.

3 (e) EFFECTIVE DATES.—

4 (1) IN GENERAL.—Except as otherwise pro-  
5 vided in this subsection, the amendments made by  
6 this section shall apply to net operating losses aris-  
7 ing in taxable years ending after December 31,  
8 2007.

9 (2) ALTERNATIVE TAX NET OPERATING LOSS  
10 DEDUCTION.—The amendment made by subsection  
11 (b) shall apply to taxable years ending after 1997.

12 (3) LOSS FROM OPERATIONS OF LIFE INSUR-  
13 ANCE COMPANIES.—The amendment made by sub-  
14 section (d) shall apply to losses from operations aris-  
15 ing in taxable years ending after December 31,  
16 2007.

17 (4) TRANSITIONAL RULE.—In the case of a net  
18 operating loss (or, in the case of a life insurance  
19 company, a loss from operations) for a taxable year  
20 ending before the date of the enactment of this  
21 Act—

22 (A) any election made under section  
23 172(b)(3) or 810(b)(3) of the Internal Revenue  
24 Code of 1986 with respect to such loss may

1 (notwithstanding such section) be revoked be-  
2 fore the applicable date,

3 (B) any election made under section  
4 172(b)(1)(H) or 810(b)(4) of such Code with  
5 respect to such loss shall (notwithstanding such  
6 section) be treated as timely made if made be-  
7 fore the applicable date, and

8 (C) any application under section 6411(a)  
9 of such Code with respect to such loss shall be  
10 treated as timely filed if filed before the appli-  
11 cable date.

12 For purposes of this paragraph, the term “applica-  
13 ble date” means the date which is 60 days after the  
14 date of the enactment of this Act.

15 (f) EXCEPTION FOR TARP RECIPIENTS.—The  
16 amendments made by this section shall not apply to—

17 (1) any taxpayer if—

18 (A) the Federal Government acquires, at  
19 any time, an equity interest in the taxpayer  
20 pursuant to the Emergency Economic Stabiliza-  
21 tion Act of 2008, or

22 (B) the Federal Government acquires, at  
23 any time, any warrant (or other right) to ac-  
24 quire any equity interest with respect to the  
25 taxpayer pursuant to such Act,

1           (2) the Federal National Mortgage Association  
2           and the Federal Home Loan Mortgage Corporation,  
3           and

4           (3) any taxpayer which at any time in 2008 or  
5           2009 is a member of the same affiliated group (as  
6           defined in section 1504 of the Internal Revenue  
7           Code of 1986, determined without regard to sub-  
8           section (b) thereof) as a taxpayer described in para-  
9           graph (1) or (2).

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